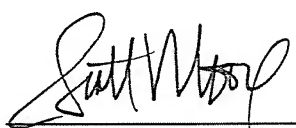


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>9400-65 (030472)</b>						
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 5px;">Application Number <b>10/652,815</b></td><td style="width: 50%; padding: 5px;">Filed <b>August 29, 2003</b></td></tr><tr><td colspan="2" style="padding: 5px;">First Named Inventor <b>Keith O. Cowan</b></td></tr><tr><td style="padding: 5px;">Art Unit <b>3627</b></td><td style="padding: 5px;">Examiner <b>Luna Champagne</b></td></tr></table>		Application Number <b>10/652,815</b>	Filed <b>August 29, 2003</b>	First Named Inventor <b>Keith O. Cowan</b>		Art Unit <b>3627</b>	Examiner <b>Luna Champagne</b>
Application Number <b>10/652,815</b>	Filed <b>August 29, 2003</b>							
First Named Inventor <b>Keith O. Cowan</b>								
Art Unit <b>3627</b>	Examiner <b>Luna Champagne</b>							
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"><div style="width: 45%;"><p>I am the</p><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <b>42,011</b></p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"> _____ Signature <b>D. Scott Moore</b> _____ Typed or printed name <b>(919) 854-1400</b> _____ Telephone number <b>February 26, 2008</b> _____ Date</div></div> <p style="margin-top: 20px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>								
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>								

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**RESPONSE UNDER 37 C.F.R. 1.116  
EXPEDITED PROCEDURE EXAMINING GROUP 3627**

ATTORNEY DOCKET NO. 9400-65 (030472)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Douglas A. Bulleit	Confirmation No.: 2478
Application No.: 10/652,815	Group Art Unit: 3627
Filed: August 29, 2003	Examiner: Luna Champagne
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ALLOCATING COSTS IN USING A BROADBAND COMMUNICATION NETWORK	

Date: February 26, 2008

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL  
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed December 5, 2007 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Applicants respectfully submit that the rejections of the currently pending claims are clearly erroneous because many of the recitations of the pending claims are not met by the cited references for at least the reasons discussed herein and in Applicants' previously filed Amendment dated October 9, 2007. Therefore, Applicants respectfully request review of the

present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of independent Claims 1, 13, 17, and 29 and dependent Claims 3, 15, 19, and 31.

**Independent Claims 1, 13, 17, and 29 are Patentable**

Independent Claims 1, 13, 17, and 29 stand rejected under 35 U.S.C. §102(b) as being anticipated by U. S. Patent No. 5,970,477 to Roden (hereinafter "Roden"). (Final Action, page 2). Independent Claim 1 is directed to a method of operating a broadband communication network, and recites:

establishing a communication flow between a network access terminal and a site using the broadband communication network; and  
allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal. (Emphasis added).

Independent Claims 17 and 29 include similar recitations. Independent Claim 13 is directed to a point of presence system, and recites:

a broadband access node that is configured to establish a communication flow between a network access terminal and a site using a broadband communication network; and  
a billing system that is configured to allocate a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal. (Emphasis added).

Independent Claims 1, 13, 17, and 29 include recitations directed to allocating a cost of a communication flow in a broadband communication network between a first account associated with a user of a network access terminal and a second account associated with another entity.

Applicants acknowledge that Roden describes allocating costs between different

entities in a narrowband network. (Roden, col. 8, line 43 - col. 10, line 3). In sharp contrast with the recitations of independent Claims 1, 13, 17, and 29, however, Roden does not disclose or suggest allocating a cost of a communication flow between an account associated with a user of a network access terminal and a second account associated with another entity in a broadband communication network. As shown in FIG. 2 of Roden, a user accesses an Internet site 18 through a modem pool 32, which provides a **narrowband** connection. By contrast, as shown in FIG. 2 of the present Specification, a broadband access node 210 may provide a user with a broadband connection to access an Internet site 208.

In response to this argument, the Final Action states "Roden continues teaching a method and system for providing an end-user with Internet-access (broadband) in column 6, lines 26 and 27." (Final Action, page 8). It appears that the Final Action is equating Internet access with a broadband communication connection. The Internet can be accessed through a broadband connection, such as that provided by DSL or cable modem technology, for example, and the Internet can also be accessed through a narrowband connection, such as that provided by dial-up access over a modem. Applicants agree that Roden teaches allocating costs for **narrowband** Internet access between different entities. Applicants submit, however, that Roden provides no teaching with respect to allocating costs for **broadband** Internet access between different entities. Accordingly, Applicants continue to maintain that Roden fails to disclose or suggest, at least, allocating a cost of a communication flow between an account associated with a user of a network access terminal and a second account associated with another entity in a broadband communication network.

For at least the foregoing reasons, Applicants respectfully requests that the present application be reviewed and that the rejection of independent Claims 1, 13, 17, and 29 be reversed by the appeal conference prior to the filing of an appeal brief.

#### **Various Dependent Claims are Separately Patentable**

Dependent Claims 4 - 9, 20 - 25, and 32 - 37 stand rejected under 35 U.S.C. §102(b) as being anticipated by Roden. (Final Action, page 2). These claims depend from dependent Claims 3, 19, and 31, respectively, which include recitations that the Final Action

acknowledges are not taught by Roden. (Final Action, page 7). Applicants submit, therefore, that dependent Claims 4 - 9, 20 - 25, and 32 - 37 are separately patentable over Roden for at least these additional reasons.

For at least the foregoing reasons, Applicants respectfully requests that the present application be reviewed and that the rejection of dependent Claims 4 - 9, 20 - 25, and 32 - 37 be reversed by the appeal conference prior to the filing of an appeal brief.

Dependent Claims 3, 15, 19, and 31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Roden in view of U. S. Patent No. 6,775,267 to Kung et al. (hereinafter "Kung"). (Final Action, page 6). The Final Action acknowledges that Roden does not disclose or suggest allocating the cost of a communication flow between first and second accounts based on whether the communication flow is at a base performance level or an enhanced performance level, but alleges that Kung provides the missing teachings. (Final Action, page 7). Applicants respectfully disagree. Kung describes billing a customer for a communication service based on the level and/or quality of the service that is provided. (Kung, col. 33, line 49 - col. 34, line 34). Kung does not disclose or suggest allocating costs between the end user and another party, such as the service provider, based on the level and/or quality of service provided to the end user. Instead, Kung describes billing all costs to the end user with the amount being based on the level and/or quality of service actually provided. Applicants submit that the combination of Roden and Kung would result in a system in which the costs of a narrowband communication flow could be allocated between a user and another party and the cost differentials based on whether the communication flow is at a base performance level or an enhanced performance level would be allocated solely to the end user based on the actual level and/or quality of service delivered to the end user.

In response to this argument, the Final Action states that Kung teaches a method of providing a user with a choice between a base performance level and an enhanced performance level for broadband access along with billing for the communication service. (Final Action, page 8). Applicants do not disagree that Kung teaches billing for a communication service based on the level and/or quality of service provided. Applicants submit, however, that Kung teaches that all the costs for the communication service are

Attorney Docket No.: 9400-65  
Application No.: 10/652,815  
Filed: August 29, 2003  
Page 5 of 5

**billed to the end user.** Kung fails to disclose or suggest allocating costs between different entities based on whether the communication service is provided at a base or enhanced performance level.

For at least the foregoing reasons, Applicants respectfully requests that the present application be reviewed and that the rejection of dependent Claims 3, 15, 19, and 31 be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,




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**CERTIFICATION OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on February 26, 2008.

  
Audra Wooten